82-1393

NO.____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ROBERT R. KAUFMAN,

Petitioner,

-vs.-

DEPARTMENTAL DISCIPLINARY COMMITTEE FOR THE FIRST JUDICIAL DEPARTMENT,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION, FIRST DEPATMENT, OF THE SUPREME COURT OF THE STATE OF NEW YORK

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QUESTIONS PRESENTED

1. Does a threatening and coercive taking of evidence and data in an Appellate Division investigation constitute an illegal search and search and seizure in violation of the Fourth (4th) Amendment of the Constitution of the United States?

2. Does the 14th Amendment (Fourteenth) prohibit the use of and admission in evidence on trial of statements and data obtained from Petitioner under compulsion—threats and coercion, which compels him to make statements and turn over all papers and data or be disbarred?

3. Is it repugnant to constitutional guarantees of due process for an Appellate Court to order an investigation of alleged violations; refer the results of said investigation for prosecution to itself; and then, as the tribunal of last resort, sit in judgment and review the application of convicted defendant who was the subject of the original court initiated investigation?

4. Is it repugnant to constitutional guarantees of due process and a fair trial for the prosecutor to SUPPRESS EXCULPATORY evidence and for the Court to deny production thereof where they previously denied a challenge to use of the evidence so seized?

5. Did the absence of Notice of the Charge of Fraud, of which petitioner was convicted, deprive petitioner of procedural due process?

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No.

In the
SUPREME COURT OF THE UNITED STATES
FEBRUARY TERM, 1983

ROBERT R. KAUFMAN,

Petitioner,

v.

DEPARTMENTAL DISCIPLINARY COMMITTEE FOR THE FIRST JUDICIAL DEPARTMENT,

Respondent.

Petitioner prays that a writ of certiorari issue to review the orders of the Appellate Division, First Department of the Supreme Court, entered on February 3, 1966, March 16, 1982, and June 24, 1982 in the above entitled case.

OPINION BELOW

The opinion of the court below with respect to the order of February 3, 1966, is reported at 25 A.D. 2d 48, 266 N.Y.S. 2d 958. No opinions were written in connection with the other orders.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3). An order of disbarment was entered by the Appellate Division on February 3, 1966. On March 16, 1982 the Appellate Division entered an order denying an application to vacate the disbarment order as being the result of an illegal search and seizure and for other relief and quashing the subpoena served to produce the exculpatory evidence withheld by respondent, and on June 24, 1982, the Appellate Division entered an order denying petitioner's application for reargument. On October 21, 1982 the New York State Court of Appeals dismissed the appeals from the above orders. On January 13, 1983 Justice Marshal signed an order extending petitioner's time to file a petition for a writ of certiorari to and including February 21, 1983.

CONSTITUTIONAL PROVISIONS

UNITED STATES CONSTITUTION: AMENDMENT IV

The right of the people to be secure in their persons, houses, papers and effects as against unreasonable searches and seizures, shall not be violated, * * *

UNITED STATES CONSTITUTION: AMENDMENT V

No person * * nor shall be compelled in any criminal case to be a witness against himself * * *

UNITED STATES CONSTITUTION: AMENDMENT XIV

Section 1 * * * nor shall any State deprive any person of life, liberty, or property, without due process of law, * * *

STATEMENT OF CASE

Petitioner was admitted to practice as an attorney and counsellor at law in the State of New York on February 2, 1938. Disciplinary proceedings were instituted on June 12, 1962 by the filing of a petition containing charges of professional misconduct. A supplemental petition containing additional charges was filed November 17, 1964 after the association obtained petitioner's additional records and data by sending him the threatening and coercive letter exhibit, threatening to take action and charging him if he did not turn over his data and records. The letter, Exhibit 1, dated August 14, 1964 was complied with. A hearing on the charges was held before a referee who rendered his report dated September 24, 1965 sustaining six of the nine charges filed against petitioner. On February 3, 1966 the same Appellate Division confirmed the report of the Referee and ordered the petitioner disbarred from practice as an attorney and counsellor at law in the State of New York effective February 3, 1966. After subsequent proceedings in the Court of Appeals and the same Appellate Division in which petitioner unsuccessfully sought reconsideration of the disbarment order, petitioner moved on January 12, 1982 for reopening of the disbarment proceedings and suppression of the evidence on the

ground that the order was upon an illegal search and he had been coerced into providing the committee on grievances of the Bar Association with incriminating evidence in violation of the Fifth Amendment privilege against self incrimination and there was a suppression of exculpatory evidence by the prosecution.

On March 16, 1982 the same Appellate Division denied petitioner's motion and on June 24, 1982 denied reargument. The Court of Appeals dismissed the petitioner's appeals taken as of right by order Dated October 21, 1982. Petitioner claimed that the use in this disciplinary proceeding of incriminating testimony obtained by coercion and threats violated his rights under the Fifth Amendment as incorporated in the Fourteenth Amendment and constituted an illegal search and seizure under the Fourth Amendment of the U.S. Constitution. Petitioner's petition in the Appellate Division for recall and reconsideration of the disbarment order of February 3, 1966, claimed that his constitutional right to due process of law guaranteed by the Fourteenth Amendment was violated by the finding of the Referee that he had made certain fraudulent assignments although the charges in the disciplinary proceedings included NO SUCH SPECIFICATION or charges.

The finding with respect to fraudulent assignments occurred in connection with Charge No. 8 in the Supplemental petition filed by the Bar Association. This charge contained no allegations or charges of fraud.

In connection with this finding with respect to this charge the referee made the further finding that in an effort to hold off the clients, petitioner made assignments to them of obligations owing to petitioner. Exhibit 2 dated May 1969, N.Y. City paid petitioner $5,000.00 on this assignment. The Referee devoted several pages of his report to a discussion of these assignments (Referee's report, pages 3-34), characterized the assignments as "worthless" (Id. at 32) and "fraudulent" (Id. at 34), and found as a result of the assignment, that petitioner engaged in a "course of misconduct" and "acted in a fraudulent manner" (Id. at 34). Charge No. 8 in connection with which the referee made these findings and conclusions contained no allegations with respect to fraudulent assignments or improper conduct in relation thereto. The opinion of the appellate division on the confirmation of the referee's report upheld his finding with respect to Charge No. 8 without comment on the finding with respect to fraudulent assignments.

It is important to note that the exhibit order of Judge Frederick Backer, Supreme Court New York County, dated May 1969 awarded $4,969.24 on the claim of petitioner he had against the City of New York, this assignment that the referee called worthless, fraudulent, and all the other epithets used by the referee. It is likewise important to note the client stated Kaufman was still his and his son's attorney and that he, the client, owed him over $3,000.00 on matters he was still handling for them. In his testimony the client stated he authorized the petitioner to use the balance of the paid fund, page 1207 of the record. The whole settlement fund was a little over $5,000.00

REASONS FOR GRANTING THE WRIT

I

Respondent's coercive demands and threats, in the course of its investigation of petitioner's fitness to continue as a member of the bar, that petitioner furnish documents and information pertinent to possible disciplinary charges confronted petitioner with the alternative of providing his accuser with inculpatory evidence with respect to possible disbarment or being disbarred for his refusal to do so. Our adversary system of Justice safeguarded by the Constitution prohibits placing a person in such a dilemma. Punishment cannot be imposed for refusal to furnish incriminating information in reliance upon the privilege. *Spevack v. Klein*, 385 U.S. 511; *Griffin v. California*, 380 U.S. 609. Although at the time of this coercive demand *Cohen v. Hurley* 366 U.S. 117 was controlling. Here as a result of the coercive demand the prosecution received files and data and used the information and papers and data to charge and convict petitioner in violation of this Court's holdings in *Garrity v. New Jersey*, 385 U.S. 493; *Ullman v. United States*, 350 U.S. 422. Since evidence so coerced under threat of punishment for refusal to supply it was used over objection which petitioner registered within 30 days after February 13, 1967. *Spevack v. Klein*, 16 N.Y.2, 1048, *Kaye v. Coordinating Committee*, 386 U.S. 17 and *Zuckerman v. Greason*, 386 U.S. 15 had not been decided until February 13, 1967. The refusal to suppress the same violated petitioner's rights under the Fifth and Fourteenth Amendments and constituted an illegal search and seizure under the Fourth Amend-

ment. (1) This Court has held civil forfeitures to be within the protection of the self incriminating privilege and (2) holding disbarment and other disqualifications from employment to be the equivalent of criminal punishment in the context of other constitutional protections.

II

The rejection by the Court below of petitioner's claim of privilege with respect to the penalty of disbarment is at odds with the decisions by this Court holding Civil Forfeitures within the protection of the privilege. *Boyd v. United States,* 116 U.S. 616; *Lees v. United States,* 150 U.S. 476; cf *Plymouth Sedan v. Pennsylvania,* 380 U.S. 693, 701. Certainly, forfeiture of the right to practice a profession is no less a penalty than forfeiture of property. The applicabilty of the privilege to property forfeitures was reaffirmed in *Spevack v. Klein* when the opinion, of Mr. Justice Douglass referred to the "Broad protection given the privilege," in *Boyd v. United States* which it described as a case "where compulsory production of books and papers of the owner of goods sought to be forfeited was held to be compelling him to be a witness against himself" (385 U.S. at 515). Mr. Justice Douglass also noted that the "views expounded in the dissents in *Cohen v. Hurley* (now overruled) need not be elaborated again. Among the views so expounded were those of Mr. Justice Black that the effects of disbarment were so severe as to entitle a lawyer to "the full benefit of the law of the land" (366 U.S. at 147) and those of Mr. Justice Douglas that "Taking away a man's right to practice law is imposing a penalty as severe as a criminal sanction" (366 U.S. at 153-154).

Numerous decisions of the Court hold disbarment or denial of the right to engage in other occupations equivalent to a criminal penalty for the purpose of other constitutional provisions. Disqualification from the practice of law, as well as the pursuit of other vocations, has been regarded as punishment for purposes of the Constitution's bill of attainder and ex post facto prohibitions. *Ex parte Garland*, 4 Wall. 333, 337 (legislative denial of an attorney's right to practice "for past conduct can be regarded in no other light than as punishment for such conduct"); *Cummings v. Missouri*, 4 Wall, 277, 327 (This deprivation of right to pursue regular avocations is punishment); *United States v. Lovett*, 328 U.S. 303, 316 "permanent proscription from any opportunity to serve the Government is punishment"; *United States v. Brown*, 381 U.S. 437 (disqualification from holding Union office held punishment). Since disqualification from the pursuit of one's vocation appears to be no less a criminal punishment for purposes of the privilege against self incrimination, rejection of the claim of privilege by the Court below with respect to disbarment warrants review by this Court.

III

Petitioner also relied upon the ground that his constitutional rights were violated when he was found guilty of having made fraudulent assignments without notice of any such charge or any reference to assignments or improper conduct in relation thereto. Petitioner's motion for recall and reconsideration on the ground that his constitutional rights were violated when he was found guilty of fraud and having made fraudulent assignments without any notice of such

charges was denied by the Appellate Division. The applicability to disciplinary proceedings of the due process notice requirement was established by this Court's decision in *In Re: Ruffalo,* 390 U.S. 544.

In the *Ruffalo* case the Court noted "the charge (No. 13) for which petitioner stands disbarred was not in the original charges made against him" 390 U.S. 549. "Disbarment designed to protect the public, is a punishment or penalty imposed on the lawyer * * *. He is accordingly entitled to procedural due process which includes fair notice of the charge." 390 U.S. 550. The Court observed further that "These are adversary proceedings of a quasi-criminal nature. The charge must be known before the proceedings commence." 390 U.S. 551. The opinion concluded that "This absence of fair notice as to the reach of the grievance procedure and the precise nature of the charges deprived petitioner of procedural due process." 390 U.S. 552.

The referee's finding that petitioner made fraudulent assignments to deceive a client is obviously relevant to his suitability to continue as a member of the bar. It must be assumed, therefore, that the finding had a bearing on the determination that disbarment was an appropriate disciplinary measure. The fact that the finding was not identified as a separate charge does not weaken its effect. Nor does the fact that it was considered in connection with another charge render notice of that charge fair notice with respect to the fraudulent assignments finding.

The charge that petitioner had appropriated his client's share of settlement proceeds, which petitioner

claimed had been loaned to him was wholly independent of petitioner's subsequent assignment to the client of obligations due to him by third parties. The referee's findings with respect to the former were made independently of his findings with respect to the assignment. Similarly, the Appellate Division in confirming the referee's report made a finding with respect to the charge involved independently of any reference to the subsequent assignment.

The findings with respect to subsequent assignments, therefore can only be regarded as a prejudicial finding concerning a separate matter with respect to which petitioner had no notice. As the Court noted in *In Re: Gault,* 387 U.S. 133:

> "Notice, to comply with due process requirements, must be given sufficiently in advance of court proceedings so that reasonable opportunity to prepare will be afforded, and it must set forth the alleged misconduct with particularity."

The Court's decision in *Ruffalo* establishes that this notice requirement is applicable to disciplinary proceedings. Since the referee found that petitioner had made fraudulent assignments, although he had been given no notice of any such charge, the court below should have granted petitioner's motion for reconsideration and other relief requested. Its failure to apply the decision of this court in *Ruffalo* warrants review by this Court.

IV

The Association's attorney had been advised during his investigation that the money from the settle-

ment had been loaned to Kaufman at an interest rate of 10 percent, page 1207 of the record. The referee in his statement charged that Kaufman had blurted out interest at the hearing only to save himself, and that it was a concoction. A subpoena was served requiring the production of the records of the investigation, so that this material which had been suppressed by the prosecution would be produced. Such exculpatory evidence would have established Petitioner's credibility and case. The Appellate Division quashed the subpoena. Such denial deprived petitioner of a Fair Trial and denied him due process. The Court has stated there shall be full observance and enforcement of the cardinal right to a fair trial, which is the overriding responsibility of the Appellate Courts. *People v. Crimmons,* 36 N.Y. 24, 230.

In *Messarosh v. United States,* 350 U.S. 1, Mr. Chief Justice Warren in delivering the opinion of the Court declared at page 9:

> "The dignity of the United States will not permit the conviction of any person on tainted testimony. This conviction is tainted and there can be no other just result than to accord petitioner a new trial."

In *Mooney v. Holohan,* 394 U.S. 103, it was held that a violation of the 14th amendment would occur when perjured testimony was knowingly used by the State Prosecutor and that:

> "Such a contrivance by a State to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of Justice as is the obtaining of a like result by intimidation."

This withholding of evidence by the prosecutor was an invasion of appellant's Constitutional rights of due process. *People v. Riley* 83 N.Y.S. 2d 281; *People v. Steele,* 65 N.Y.S 2d 214. Such suppression of evidence warrants review by this Court.

V

It appears that the Appellate Division designated counsel to investigate petitioner and to determine whether he should be brought up on charges. Counsel demanded that petitioner make statements and turn over his papers and files. Counsel likewise made good his verbal threats when he put it into writing that unless petitioner complied he would be charged and prosecuted. Petitioner complied although not voluntarily. As soon as the Spevack case was decided petitioner registered his objection. The same Appellate Division appointed a Referee to hear these charges that the Appellate Division had obtained through its designated agents. Then when the said Referee of the Appellate Division filed his report with the Appellate Division, they, the same Appellate Division, entertained a motion to confirm the report they had directed and they confirmed such report of petitioner who was the subject of this court initiated investigation. Petitioner later moved to vacate and set aside the conviction and it had to be before the same Appellate Division.

From the foregoing, it logically follows that any statement obtained or papers obtained from petitioner under threat of disbarment were not voluntary, totally lacking in due process, cannot be said to have

been freely made, and constitutes an illegal search and seizure and the evidence should have been suppressed. Due Process requires that every procedure in a matter of law must hold the balance nice, clear and true between the State and the accused and, if it does not, then there is a denial of due process.

Tumey v. Ohio, 273 U.S. 510, 47 S. Ct. 437. This Court has also recognized the Gross Abuse which can result from the one man "judge—grand jury" as exemplified in the case of *In re Murchison,* 349 U.S. 133, 75 S. Ct. 623. In *Murchison,* Justice Black, speaking for the majority stated:

> "It would be very strange if our system of law permitted a judge to act as a grand jury and then try the very person accused as the result of his investigation.
>
> "A single 'judge grand jury' is even more a part of the accusatory process than an ordinary lay grand jury. Having been a part of that process, a judge cannot be, in the very nature of things, wholly disinterested in the conviction or acquittal of those accused. Thus the judge whom due process requires to be impartial in weighing the evidence presented before him, called on his own personal knowledge and impressions of what had occurred in the grand jury room and his judgment was based in part on his impression, the accuracy of which could not be tested by adequate cross examination.
>
> "We hold that it was a violation of due process for the 'judge grand jury' to try these petitioners."

The issues thus raised by this question touche the very roots of the separation of powers in constitu-

tional governments as established in the United States. The action of the Appellate Division is a violation of due process and offends the canons of fairness which we cherish.

It acted through its agents as investigator, prosecutor, judge and court of last resort. Where then can defendants turn for help but to the Supreme Court of the United States.

Such denial of due process warrants review by this Court.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

HAROLD J. McLAUGHLIN
Attorney for Petitioner

ORDER DATED OCTOBER 21, 1982

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the twenty-first day of October, A.D. 1982

Present: Hon. Lawrence H. Cooke, Chief Judge, presiding.

STATE OF NEW YORK
COURT OF APPEALS

Mo. No. 1007

In the Matter of Robert R. Kaufman,

Appellant,

Departmental Disciplinary Committee for the First Judicial Department,

Respondent.

A motion having heretofore been made herein upon the part of the appellant to consolidate his appeals in this Court etc., papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, on the Court's own motion, that the appeals from the Appellate Division orders dated June 24, 1982 and March 16, 1982 be and the same

hereby are dismissed, without costs, upon the ground that the orders appealed from do not finally determine the proceeding within the meaning of the Constitution; and it is

ORDERED, that the said motion to consolidate etc. be and the same hereby is dismissed as academic.

s/Joseph W. Bellacosa
JOSEPH W. BELLACOSA
Clerk of the Court

ORDER DATED JUNE 24, 1982

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on June 24, 1982

Present: Hon. Francis T. Murphy, Jr., Presiding Justice

Theodore R. Kupferman
Joseph P. Sullivan
John Carro
Vincent A. Lupiano, Justices

In the Matter of the application of

ROBERT R. KAUFMAN,

Petitioner.

An order of this Court having been made and entered on February 3, 1966, disbarring the above-named petitioner, Robert R. Kaufman, from practice as an attorney and counselor-at-law in the State of New York,

And said petitioner having moved for reargument of the aforesaid order, and for entry of a final judgment in this proceeding,

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the affidavit of Robert R. Kaufman, sworn to on March 22, 1982, and the exhibit annexed thereto, in support of the motion, and the affidavit of Joseph Rosenberg, sworn to on March 26, 1982, in opposition to the motion, and after hearing Mr. Harold J. McLaughlin for the motion, and Mr. Joseph Rosenberg opposed; and due deliberation having been had thereon,

It is ordered that said motion be and the same hereby is denied.

ENTER:

JOSEPH J. LUCCHI, Clerk

ORDER DATED MARCH 16, 1982

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on March 16, 1982

Present: Hon. Francis T. Murphy, Jr., Presiding Justice

Theodore R. Kupferman
Joseph P. Sullivan
John Carro
Vincent A. Lupiano, Justices

In the Matter of the Application of
ROBERT R. KAUFMAN,

Petitioner,

For Reinstatement to the Bar of the State of New York,

Departmental Disciplinary Committee for the First Judicial Department,

Respondent.

An order of this Court having been made and entered on February 3, 1966, disbarring the above-

named petitioner, Robert R. Kaufman, from practice as an attorney and counselor-at-law in the State of New York,

And said petitioner having moved for an order vacating the order of disbarment,

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the statement of Harold J. McLaughlin dated December 1, 1981, the affidavit of Robert R. Kaufman, sworn to December 1, 1981, and the exhibits annexed thereto, in support of the motion, and the affidavit of Joseph Rosenberg, sworn to February 2, 1982, and the exhibits annexed thereto, in opposition to said motion, and after hearing Mr. Harold J. McLaughlin for the motion, and Mr. Joseph Rosenberg opposed; and due deliberation having been had thereon,

It is ordered that said motion be and the same hereby is denied and respondent's cross-motion to quash the subpoena *duces tecum* granted.

ENTER:

Joseph J. Lucchi, Clerk.

ORDER DATED FEBRUARY 3, 1966

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 3rd day of February, 1966.

Present: Hon. Bernard Botein, Presiding Justice

Hon. Charles D. Breitel,
Hon. Harold A. Stevens,
Hon. Samuel W. Eager,
Hon. Aron Steuer, Justices.

In the Matter of

ROBERT R. KAUFMAN,

An Attorney

The Association of the Bar of the City of New York, by Eric Nightingale, Esq., its attorney, having presented to this Court on the 12th day of June, 1962, a petition containing charges of professional misconduct against the above-named respondent, Robert R. Kaufman, who was admitted to practice as an attorney and counselor-at-law in the State of New York, on the 2nd day of February, 1938, at a term of the Appellate Division of the Supreme Court, Second Judicial Department, and having petitioned the Court to take such action upon such charges as in the judgment of said Court justice may require; and the

respondent having appeared herein by his attorney, Rudolph Stand, Esq., and having interposed an answer to said petition, duly verified the 25th day of June, 1962, and the Court having duly made and entered an order on the 12th day of July, 1962, appointing Theodore R. Kupferman, Esq., as Referee herein to take testimony in regard to said charges and to report to this Court his opinion thereon; and thereafter and on the 17th day of November, 1964, the Association of the Bar of the City of New York, having presented to this Court a supplemental petition containing additional charges of professional misconduct against the above-named respondent and having petitioned the Court to take such action upon such additional charges as in the judgment of said Court justice may require; and the respondent having appeared herein by his attorney, H. Elliot Wales, Esq., and having interposed an answer to said supplemental petition, duly verified the 18th day of November, 1964, and the Court having duly made and entered an order on the 1st day of December, 1964, appointing Theodore R. Kupferman, Esq., as Referee herein to take testimony in regard to said additional charges and to report to this Court his opinion thereon; and thereafter and on the 18th day of February, 1965, an order of this Court having been made and entered relieving theodore R. Kupferman, Esq., as Referee herein, which appointment was contained in the order of this Court entered on July 12, 1962 and December 1, 1964, and appointing Samuel C. Coleman, Esq., as Referee in the place and stead of Theodore R. Kupferman, Esq., and a stipulation having been entered into between the attorneys for the respective parties, dated January 25, 1965, that the record of the pro-

ceedings held to date before Theodore R. Kupferman, Esq., Referee, including the testimony of all witnesses, shall be binding in the same manner as if same had taken place before the new Referee; and the hearing, pursuant to said order of reference having been duly continued before Referee Samuel C. Coleman and the said Referee having duly heard the testimony and proofs tendered by the parties hereto, and having thereafter rendered his report thereon to this Court, which report was dated the 24th day of September, 1965, and was filed in the office of the Clerk of this Court on the 1st day of October, 1965;

And the petitioner thereafter and on the 7th day of December, 1965, having moved for an order confirming the Referee's report and adjudging the respondent guilty of professional misconduct and that the Court take such action herein as it might deem just and proper;

Now, upon reading the petition of The Association of the Bar of the City of New York, verified the 31st day of May, 1962, the affidavit of Eric Nightingale, Esq., annexed thereto, sworn to the 29th day of May, 1962, the notice of presentation of said petition, dated the 31st day of May, 1962, with proof of due service thereof upon the respondent, the answer of the respondent to said petition, verified the 25th day of June, 1962, the order of this Court dated the 12th day of July, 1962, appointing Theodore R. Kupferman, Esq., as Referee herein, all of which papers were duly filed in the office of the Clerk of this Court on the 12th day of July, 1962, the supplemental petition of The Association of the Bar of the City of

New York, verified the 4th day of September, 1964, the affidavit of John G. Bonomi, Esq., annexed thereto, sworn to the 3rd day of September, 1964, the notice of presentation of said supplemental petition, dated the 4th day of September, 1964, with proof of due sevice thereof upon the respondent, the answer of the respondent to said supplemental petition, verified the 18th day of November, 1964, the order of this Court, dated the 1st day of December, 1964, appointing Theodore R. Kupferman, Esq., as Referee herein, all of which papers were duly filed in the office of the Clerk of this Court on the 1st day of December, 1964, the order of this Court entered on February 18, 1965, relieving Theodore R. Kupferman, Esq., as Referee herein, and appointing Samuel C. Coleman, Esq., as Referee in the place and stead of Theodore R. Kupferman, Esq., the stipulation of the attorneys for the respective parties, dated January 25, 1965, the report of Samuel C. Coleman, Esq., the Referee herein, dated the 24th day of September, 1965, together with the testimony taken by him and the exhibits offered in evidence, which were filed in the office of the Clerk of this Court on the 1st day of October, 1965; and upon reading and filing the notice of motion for an order confirming the report of the Referee and adjudging the respondent guilty of professional misconduct, dated the 26th day of October, 1965, with proof of due service thereof, and after hearing Mr. John G. Bonomi for the motion, and Mr. H. Elliot Wales opposed, and due deliberation having been had thereon; and the Court having unanimously found and decided that the respondent has been guilty of professional misconduct in his office of attorney and counselor-at-law, it is hereby unanimously

Ordered that the report of Samuel C. Coleman, Esq., the Referee herein, filed in the office of the Clerk of this Court on the 1st day of October, 1965, be, and the same hereby is, confirmed; and it is further unanimously

ordered that the said Robert R. Kaufman be and he hereby is disbarred from practice as an attorney and counselor-at-law in the State of New York, effective March 3, 1966; and it is further unanimously

Ordered that the name of said Robert R. Kaufman be struck from the roll of attorneys and counselors-at-law in the State of New York effective March 3, 1966; and it is further unanimously

Ordered that the said Robert R. Kaufman be and he hereby is commanded to desist and refrain from the practice of the law in any form, either as principal or agent, clerk or employee of another, effective March 3, 1966; and it is further unanimously

Ordered that the said Robert R. Kaufman be and he hereby is forbidden to appear as an attorney or counselor-at-law before any court, judge, justice, board, commission or other public authority, effective March 3, 1966; and it is further unanimously

Ordered that the said Robert R. Kaufman be and he hereby is forbidden to give to another an opinion as to the law or its application or any advice in relation thereto effective March 3, 1966.

ENTER:

HYMAN W. GAMSO
Clerk

LETTER DATED AUGUST 14, 1964 FROM THE ASSOCIATION OF THE BAR

Personal

Robert Kaufman, Esq.
51 Chambers Street
New York, N.Y. 10007

Dear Mr. Kaufman:

We have received no reply to our letter of July 1, 1964. Unless the requested statement is received on or before September 1, 1964, we will have no alternative but to present formal charges, including a charge of failing to cooperate with the Committee, to the Committee on Grievances.

Very truly yours,

s/Michael Franck
MICHAEL FRANCK

MF:cf

JUDICIAL SUBPOENA DUCES TECUM

APPELLATE DIVISION: SUPREME COURT FIRST DEPARTMENT

In the Matter of ROBERT R. KAUFMAN,

An Attorney

THE PEOPLE OF THE STATE OF NEW YORK

TO JOSEPH ROSENBERG, Attorney for Department Disciplinary Committee, 41 Madison Avenue, New York, New York.

GREETING:

WE COMMAND YOU, that all business and excuses being laid aside, you and each of you appear and attend before the Appellate Division of the Supreme Court, First Department, at the Courthouse, 25th Street and Madison Avenue, New York, New York, on the 12th day of January, 1982 at 1:00 o'clock, in the afternoon, and at any recessed or adjourned date to give testimony in this action on the part of the Petitioner, and that you bring with you, and produce at the time and place aforesaid, a certain all handwritten notes and recordings and reports made by Michael Frank, Esq.; and the attorneys, and the assistant attorneys, and of information, conversations, and Data, and of others made, obtained, from Robert R. Kaufman, and others under petition and charges of July 12,

1962 and supplemental petition of 9/3/64 and December 1, 1964, and charges made thereon, and order made thereon dated February 3, 1966, now in your custody, and all other deeds, evidences and writings, which you have in your custody or power, concerning the premises.

Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.

WITNESS, Honorable Francis T. Murphy, one of the Justices of said Court, at New York, New York, the day of January, 1982.

SO ORDERED

s/Harold J. McLaughlin, Esq.

J.S.C.
Appellate Division
First Department

HAROLD J. McLaughlin, Esq.
Attorney for Petitioner

Office and P.O. Address
32 Court Street
Suite 1700
Brooklyn, N.Y. 11201
(212) 858-8080

DECISION

At a Special Term, Part VII of the Supreme Court of the State of New York, held in and for the County of New York, at 60 Centre Street, in the Borough of Manhattan, City of New York, on May 1969.

Present:

HON. FREDERICK BACKUR, Justice

In re Application of Leo Goldberg, Assignee of part of the claim of Robert R. Kaufman, and Gas Check Corporation for payment of award for fixture damage, Parcel No. 29, on the damage map and in the final decree of the Supreme Court, in Proceeding to acquire title to real property required for Manhattan Civic Center Area, etc., in the Borough of Manhattan, City of New York.

A motion having been made for an order directing the Comptroller of The City of New York to pay to Leo Goldberg the sum of $1,150.00 principal with interest from July 9th, 1965, the award made herein to Gas Check Corporation for fixture damages by reason of the acquisition of title by The City of New York in the above-mentioned proceeding, to the lands and premises known therein as Damage Parcel No. 28 and said motion having duly come on to be heard on May 6, 1969.

NOW, on reading and filing the petition of Leo Goldberg, verified the 3rd day of March, 1969, and the notice of motion, with proof of due service thereof, and on all the papers and proceedings heretofore had herein; and, after hearing Philip Zichello, Esq., attorney for the petitioner, in support of said motion, J. Lee Kankin, Esq., Corporation Counsel of The City of New York, appearing by Harold J. Lynch, Esq., Assistant Corporation Counsel, in opposition thereto, Bernard W. Coblentz, Esq., attorney for the Gas Check Corporation, in opposition thereto, and Robert R. Kaufman, the President of Gas Check Corporation appearing for himself, also in opposition to said motion, and the facts in the matter having been submitted to the Court, and the parties having stipulated in open Court, and due deliberation having been had thereon and upon filing the opinion of the Court, now

On motion of Philip Zichello, Attorney for the petitioner, it is

ORDERED, that the motion be and the same hereby is in all respects granted, and it is further

ORDERED, that the Comptroller of The City of New York withdraw and cancel the warrants totalling $4,969.24 payable to the Gas Check Corporation, now extant and it is further

ORDERED, that the Comptroller of The City of New York on behalf of The City of New York, pay the aforesaid award as follows: first

(a) To The City of New York for payment to date of its prior rent lien of $1,395.00, and second

(b) To Bernard W. Coblentz, Esq., in full payment of his lien of $544.00 for attorney's fees, and

(c) To Leo Goldberg an assignee of Gas Check Corporation the sum of $1,150.00, and lawful interest, and

(d) The balance, if any, to the Gas Check Corporation.

ENTER

J.S.C.
(FREDERICK BACKER)